

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**MATHEW BAXTER AND  
TONYA BAXTER**

**v.**

**BELFOR USA GROUP, INC.  
d/b/a BELFOR PROPERTY  
RESTORATION**

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**CIVIL ACTION NO. 6:19-cv-616**

**JURY DEMANDED**

**DEFENDANT BELFOR USA GROUP, INC.  
d/b/a BELFOR PROPERTY RESTORATION'S  
NOTICE OF REMOVAL OF CIVIL ACTION**

Defendant Belfor USA Group, Inc. d/b/a Belfor Property Restoration (“Belfor” or “Removing Defendant”), by and through its attorneys, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, files this Notice of Removal of the action styled Mathew Baxter and Tonya Baxter v. Belfor USA Group, Inc. d/b/a Belfor Property Restoration, Case No. CV607-19DC (the “Action”), from the Hill County, Texas District Court, in which this action now is pending, to the United States District Court of the Western District of Texas, Waco Division.

**I. INTRODUCTION**

This is a civil action over which this Court has original subject-matter jurisdiction under 28 U.S.C. §§ 1332 and 1441(b), in that the matter in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and is between citizens of different States; Defendant Belfor is not a citizen of Hill County, Texas, where the underlying Action was commenced. In support thereof, Removing Defendant states as follows:

1. On or about September 12, 2019, Mathew Baxter and Tonya Baxter (“Baxter” or “Plaintiff”) filed a Complaint against Defendant Belfor in the 66<sup>th</sup> Judicial District Court of Hill County, Texas. The case was assigned Case No. CV607-19DC.<sup>1</sup>
2. Defendant Belfor was served with the Summons and Petition on September 23, 2019.<sup>2</sup>
3. No other pleadings have been served on Belfor and no orders have been entered by the Court.
4. This Notice of Removal is timely under 28 U.S.C. § 1446(b), because it is filed within 30 days of Belfor’s receipt of Plaintiff’s Petition, and within one year of the commencement of the Action.

## **II. BASIS FOR REMOVAL: DIVERSITY JURISDICTION**

5. This action is subject to removal pursuant to 28 U.S.C. § 1441(a) because it is within the original jurisdiction of the United States District Court under 28 U.S.C. § 1332(a).
6. There is diversity of citizenship between the Plaintiff and Defendant under 28 U.S.C. § 1332(a) in that:
  - a. Plaintiffs Mathew Baxter and Tonya Baxter are individuals domiciled in Bynum, Hill County, Texas, and therefore, for the purposes of this Notice of Removal, Plaintiffs are citizens of Hill County, Texas.<sup>3</sup>
  - b. Defendant Belfor USA Group, Inc. is a corporation incorporated under the laws of the State of Colorado, with its principal place of business in Birmingham, Michigan, and therefore, for the purpose of this Notice of Removal, Defendant Belfor is a citizen of the states of Colorado or Michigan; and

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<sup>1</sup> See Plaintiff’s Petition, attached hereto as Exhibit D.

<sup>2</sup> See Notice of Service of Process, attached hereto as Exhibit E.

<sup>3</sup> See Ex. D, ¶ 5.

7. The United States District Court for the Western District of Texas has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy, exclusive of interest and costs, exceeds Seventy-Five Thousand Dollars (\$75,000.00).

Diversity jurisdiction is proper if “‘it is facially apparent’ from the plaintiffs’ complaint that their ‘claims are likely above [\$75,000].’ . . . If the value of the claims is not apparent, then the defendants ‘may support federal jurisdiction by setting forth the facts— [either] in the removal petition [or] by affidavit—that support a finding of the requisite amount.’”<sup>4</sup> Diversity jurisdiction exists where a removing defendant establishes by a preponderance of the evidence that the amount in controversy exceeds \$75,000.<sup>5</sup>

Here, Plaintiffs state in their Petition that they seek monetary relief in excess of \$100,000 against Belfor.<sup>6</sup> Therefore, based on the value of the relief made facially apparent by the Petition, the amount in controversy far exceeds \$75,000, exclusive of interests and costs.

### III. VENUE

8. Pursuant to 28 U.S.C. § 1446(d), Defendant Belfor will file a Notice of Filing of Notice of Removal with the Hill County, Texas District Court.

9. Defendant Belfor will serve a copy of the Notice of Removal on Plaintiffs in accordance with 28 U.S.C. § 1446(d).

10. Pursuant to 28 U.S.C. § 1441(a), venue is proper in this Court because it is the “district and division embracing the place where such action is pending.”

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<sup>4</sup> *Govea v. JPMorgan Chase Bank, N.A.*, No. CIV.A. H-10-3482, 2010 WL 5140064, at \*2 (S.D. Tex. Dec. 10, 2010) (quoting *Garcia v. Koch Oil Co. of Tex. Inc.*, 351 F.3d 636, 639 (5th Cir. 2003) (quoting *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995))).

<sup>5</sup> *Garcia v. Koch Oil Co. of Tex., Inc.*, 351 F.3d 636, 638-39 (5th Cir. 2003) (quoting *De Aguilar v. Boeing Co.*, 11 F.3d 55, 58 (5th Cir. 1993)).

<sup>6</sup> See Ex. D, ¶ 7.

#### **IV. ADDITIONAL REQUIREMENTS AND EXHIBITS**

Pursuant to 28 U.S.C. § 1446(a), this Notice of Removal is accompanied by copies of the following:

Exhibit A	Index of Exhibits being filed with this Federal Notice of Removal;
Exhibit B	List of all counsel of record;
Exhibit C	State Cause No. CV607-19DC docket sheet;
Exhibit D	09/12/19 Baxter Original Petition No. CV607-19DC;
Exhibit E	09/23/19 Belfor served with suit No. CV607-19D, and;
Exhibit F	10/14/19 Belfor original answer in No. CV607-19DC.

11. Defendant Belfor reserves the right to amend or supplement this Notice of Removal.
12. By filing this Notice of Removal, Defendant Belfor does not waive, and expressly reserves its right to raise, any and all procedural and/or substantive defenses.
13. Belfor requests a trial by jury.
14. No previous application has been made for the relief requested herein.

WHEREFORE, Defendant Belfor USA Group, Inc. d/b/a Belfor Property Restoration gives notice that the action pending against it in the Hill County, Texas District Court has been removed from that court to the United States District Court for the Western District of Texas, Waco Division, dated this 14<sup>th</sup> day of October 2019.

Respectfully submitted,

**BAKER DONELSON  
BEARMAN, CALDWELL & BERKOWITZ, P.C.**

By: /s/ Eddy De Los Santos  
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**Attorneys for Belfor USA Group, Inc.  
d/b/a Belfor Property Restoration**

**CERTIFICATE OF SERVICE**

I certify that on October 16, 2019, a true and correct copy of the foregoing document was delivered to the following counsel of record on the CM/ECF system, which will automatically serve a Notice of Electronic Filing:

**Attorneys for Mathew Baxter and Tonya Baxter**

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